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RESOLUTIONS OF THE CHAMBERS OF THE POLISH PARLIAMENT (SEJM AND SENATE) ON RECOGNITION OF RUSSIA AS A TERRORIST STATE IN LIGHT OF THE PRACTICE OF PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE AND EUROPEAN PARLIAMENT

Abstract: *The Parliament of the Republic of Poland was one of five European parliaments which – in view of the full-scale aggression by Russia against Ukraine which commenced on 24 February 2022 – adopted resolutions declaring the Russian Federation as a state associated with terrorism. The Polish acts are consistent with resolutions adopted on the same subject by the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament of the European Union (EP).*

Although not legally binding, the adoption of these resolutions have a large symbolic dimension and may have a negative impact on the perception of and possibilities of Russian participation in the international arena. From the Polish perspective, the national decisions linking Russia with terrorist activities will influence decisions taken within the sanctions regime, as well as with regard to the legal qualification of certain acts under Polish criminal law in the course of proceedings conducted by Polish prosecution authorities in relation to the war. Finally, as long as the war continues and the assessment of Russia as a terrorist state remains in place, it will not be possible to restore and maintain ordinary diplomatic, economic and other relations with that state.

Keywords: the Parliament of the Republic of Poland, resolution, Russia, terrorist state, sanctions regime

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INTRODUCTION

The Parliament of the Republic of Poland was one of five European parliaments which – in view of the full-scale aggression carried out on 24 February 2022 by Russia against Ukraine – adopted resolutions declaring the Russian Federation (RF) as a state associated with terrorism. Accordingly, on 26 October 2022 the Senate (upper chamber of the Polish Parliament) adopted a resolution on recognition of the RF as a terrorist regime; and on 14 December 2022 the Sejm (lower chamber of the Polish Parliament) adopted a resolution on the recognition of the Russian Federation as a state supporting terrorism.¹ Similar resolutions have already been adopted by the Parliaments of Estonia, Lithuania, Latvia and Czechia.²

The activities of above-listed national parliaments are consistent with resolutions adopted on the same subject by the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament of the European Union (EP), and it should be emphasized that Poland is an active member of both bodies and fully supports their activities aimed at condemnation of the aggression against Ukraine.

1. ACTIONS AT THE EUROPEAN LEVEL TO DESIGNATE RUSSIA'S ACTIONS AS OF A TERRORIST CHARACTER

During its Autumn plenary session (10–14 October 2022), the PACE held yet another debate in reaction to Russia's continued war of aggression against Ukraine and the deliberate attacks and atrocities committed by Russian forces and their proxies against civilians in Ukraine. Following the debate, it adopted Resolution 2463, entitled "Further escalation in the Russian Federation's aggression against Ukraine",

¹ Resolution of the Senate of the Republic of Poland of 26 October 2022 on the recognition of the Russian Federation as a terrorist regime, available at: <https://www.senat.gov.pl/aktualnoscilista/art,15100,uchwala-senatu-o-uznaniu-wladz-federacji-rosyjskiej-za-rezim-terrorystyczny.html>; Resolution of Sejm of the Republic of Poland of 14 December 2022 on the recognition of the Russian Federation as a state supporting terrorism, available at: <https://tinyurl.com/v59nr96j> (both accessed 30 April 2023).

² Seimas (Lithuania), Resolution on the recognition of the actions of the Russian Federation in Ukraine as genocide and the establishment of a special international criminal tribunal to investigate the crime of Russian aggression, 10 May 2022, no. XIV-1070, available at: https://www.lrs.lt/sip/getFile3?p_fid=47002; Statement of the Latvian Parliament of 11 August 2022, available at: <https://www.nato-pa.int/document/latvia-statement-declaring-russia-state-sponsor-terrorism-11-august-2022>; Statement of the Riigikogu (Parliament of Estonia) on condemning the annexation of the territory of Ukraine and declaring Russian regime a terrorist regime, 11 August 2022, available at: <https://www.riigikogu.ee/wpcms/wp-content/uploads/2022/10/Statement-of-the-Riigikogu-18.10.2022-eng.pdf>; Resolution of the Czech Chamber of Deputies of 15 November 2022: On Russia's escalating aggression in Ukraine, crimes against the Ukrainian civilian population and support for the establishment of a special international criminal tribunal to investigate war crimes committed by the armed forces and security forces of the Russian Federation (pt. 4 designates, in accordance with the resolution of the PACE, the current Russian regime as terrorist), available at: <https://www.psp.cz/sqw/cms.sqw?z=16713>, and <https://www.rferl.org/a/russia-czech-parliament-terrorist-regime/32133339.html> (all accessed 30 April 2023).

which was a new and significant development in the organisation's reaction to the aggression.³ The PACE equated the intensification of Russia's indiscriminate use of long-range artillery to target towns and cities across Ukraine with a "terrorist policy", the aim of which is to suppress the will of Ukrainians to resist and defend their country and to cause maximum harm to civilians.⁴ It should be emphasized that the PACE associated the term "terrorist policy" with the military actions of the Russian Federation, which took the form of "indiscriminate attacks" against the civilian population. Simultaneously, it called for establishment of a comprehensive system to hold the RF and its leadership accountable for this aggression and for the RF's violations of international human rights and international humanitarian law. Contrary to the narrative quite intensively presented by the Ukrainian side,⁵ the PACE did not define the Russian Federation as a "terrorist state". It only called on Member States to declare the current Russian regime a terrorist one in view of the policies being conducted.⁶ The unequivocal assessment of Russia's actions as advancing a terrorist policy was consistent with the earlier decisive statements of the organs of the Council of Europe (CoE) expressing condemnation of the violations of law and the cruelty of Russian actions and actors.

Another important development at the European level was the resolution of the European Parliament (EP) adopted on 14 November 2022, which directly recognised Russia as a state sponsor of terrorism and as a state which uses means of terrorism.⁷ Russia's activities have been equated or linked to acts of terror on many levels. Firstly, the EP considered that the purpose of RF's non-discriminate actions was to terrorize the Ukrainian population (also by the Russian occupation of the Zaporizhzhia power plant⁸) and to suppress their resistance.⁹ Indicating the nature of the actions as reflecting a desire to terrorize the population is a basic and most characteristic feature of generally all the definitions of terrorism that have been proposed so far,¹⁰ thus the pronouncement of the EP followed international practice.

³ Parliamentary Assembly of the Council of Europe, Resolution 2463 (2022): *Further escalation in the Russian Federation's aggression against Ukraine*.

⁴ *Ibidem*, para. 6

⁵ *PACE unanimously adopts resolution declaring Russia a terrorist regime*, Ukrinform, 13 October 2022, available at: <https://www.ukrinform.net/rubric-polytics/3592527-pace-unanimously-adopts-resolution-declaring-russia-a-terrorist-regime.html> (accessed 30 April 2023).

⁶ Parliamentary Assembly of the Council of Europe, *supra* note 3, para. 13.7.

⁷ European Parliament, *Resolution on recognising the Russian Federation as a state sponsor of terrorism*, 2022/2896(RSP), para. 2.

⁸ *Ibidem*, para. 14.

⁹ *Ibidem*, pt. (G).

¹⁰ Already Rafał Lemkin, in his article published in 1935 in "Gazeta Sądowa Warszawska", pointed out that terrorist acts consist primarily in intimidating the population, while international terrorism is aimed at harming the interests of the state or is intended to pose a threat to the entire international order. See R. Lemkin, *Terrorizm*, 41 Gazeta Sądowa Warszawska 561 (1935). The League of Nations Convention for the Prevention

Furthermore, the EP indicated that Russia supported and financed terrorist regimes and organisations¹¹ and that actions undertaken by Russian and proxy forces fit the definition of terrorism accepted by the European Union (EU), the UN Security Council and the UN General Assembly, and contained in UN Security Council Resolution 1566 of 2004, UN General Assembly Resolution 49/60 of 9 December 1994, and Council Common Positions 2001/931/CFSP and 2009/468/CFSP.¹² The final designation of Russia as a state sponsor of terrorism and as a state which uses means of terrorism was based on the assessment that “the deliberate attacks and atrocities carried out by the Russian Federation against the civilian population of Ukraine, the destruction of civilian infrastructure and other serious violations of human rights and international humanitarian law amount to acts of terror against the Ukrainian population and constitute war crimes”.¹³ Thus once again, like in the resolution of the PACE, the qualification of the Russian activities under the notion of terrorism was linked to the violations of international law protecting individuals. The resolution called for the EU and its Member States to develop an EU legal framework for the designation of states as sponsors of terrorism and states which use means of terrorism, which would trigger a number of significant restrictive measures against those countries and would have profound implications for EU relations with those countries.¹⁴

Neither the resolution adopted by the PACE nor that adopted by the EP associating Russia with terrorism are of a binding character according to statutory acts of the CoE and EU. Additionally, both organisations do not have a legal framework to designate countries as states sponsoring terrorism (also due to the lack of a legal definition of the notion of terrorism – an issue discussed below) which would entail the direct responsibility of Russia for the perpetrated acts.

The activities of the European parliamentary bodies have to be generally perceived in the light of the fact that international law does not define terms such as “terrorist regime”, “state supporting terrorism”, “state using terrorist measures/means” or a “terrorist state”. Moreover, there is no comprehensive and universal

of Terrorism of 1937, which was the first act of international law concerning the fight against international terrorism, defined terrorism as “a criminal act directed against a state or aimed at inducing a state of terror in the consciousness of specific persons, groups of persons or public opinion,” League of Nations, Convention for the Prevention and Punishment of Terrorism, Doc. C.546. M3831937.V (1937). See C. Walter, *Defining Terrorism in National and International Law*, in: C. Walter et al. (eds.), *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, Springer, Berlin: 2004, p. 33.

¹¹ European Parliament, *supra* note 7, pt. (L).

¹² Council Common Position 2009/468/CFSP of 15 June 2009 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2009/67/CFSP, OJ L 151, 16.6.2009, p. 45.

¹³ European Parliament, *supra* note 7, para. 2.

¹⁴ *Ibidem*, para. 4.

normative definition of terrorism itself.¹⁵ The debate in this regard has been carried out in the UN and CoE fora for many years, and includes unsuccessful attempts to create a uniform definition. The only points of reference are sectoral definitions as provided in various treaties concluded in recent decades.¹⁶

Moreover, the current instruments of international law regulating the issue of terrorism do not provide legal mechanisms for recognising a specific state as a “state supporting/sponsoring terrorism”, nor any related consequences thereof. The international community’s response to a state’s involvement in terrorist activities is to recognise that certain such activities threaten international peace and security. In such a situation it is for the United Nations Security Council (UNSC) to act under Chapter VII of the United Nations Charter and take measures to maintain or restore international peace and security, e.g. by imposing targeted sanctions concerning individuals and entities involved in terrorism.¹⁷ Currently, the qualification of terrorism as a threat to international peace and security is beyond doubt.¹⁸

It has to be underscored that the issue of Russia’s denomination as a terrorist state – in the context of the war in Ukraine – has never been under discussion in UNSC, despite the fact that the Ukraine’s representatives and politicians appearing at the UN meetings have on numerous occasions expressly accused Russia of being a terrorist state. Especially momentous was the appeal of Ukrainian President Volodymyr Zelensky to adopt a resolution condemning all forms of “energy terror” as Russian strikes on cities across Ukraine decapitated the country’s energy infrastructure.¹⁹ The failure to discuss the issue at the UNSC proves that even on the part of states supporting Ukraine there is lack of will to adopt such a document, not only due to the fear that it will be vetoed by Russia, but also bearing in mind the possible legal and political consequences of such an action. At the same time, a good example of how the

¹⁵ For an overview of the struggle over the definition, see M. Di Filippo, *The Definition(s) of Terrorism in International Law*, in: B. Saul (ed.), *Research Handbook on International Law and Terrorism* (2nd ed.), Edward Elgar, Cheltenham: 2020, pp. 2ff; C.M. Díaz-Barrado, *The Definition of Terrorism and International Law*, in: P.A. Fernández-Sánchez (ed.), *International Legal Dimension of Terrorism*, Brill, Leiden: 2009, p. 27.

¹⁶ A. Gioia, *The UN Conventions on the Prevention and Suppression of International Terrorism*, in: G. Nesi (ed.), *International Cooperation in Counter-terrorism: The United Nations and Regional Organizations in the Fight Against Terrorism*, Routledge, London: 2006.

¹⁷ See e.g. Security Council Resolution 1373 (UN Doc. S/RES/1373 (2001)), 28 September 2001; Resolution 1456 (UN Doc. S/RES/1456 (2003)), 20 January 2003; Resolution 1566 (UN Doc. S/RES/1566 (2004)), 8 October 2004; Resolution 2139 (S/RES/2139 (2014)), 22 February 2014. For more about the evolution of the attitude of the Security Council toward denominating terrorism as a threat to peace see: B. Krzan, *The UN Security Council and international terrorism*, XL Polish Yearbook of International Law 79 (2020).

¹⁸ Krzan, *supra* note 17, p. 82.

¹⁹ *Ukraine proposes to adopt a resolution condemning energy terror* (speech by President Volodymyr Zelenskyy at the meeting of the UN Security Council convened after the missile strikes of the Russian Federation), available at: <https://www.president.gov.ua/en/news/ukrayina-proponuye-uhvalili-rezolyuciyu-pro-zasudzhennya-ene-79381> (accessed 30 April 2023).

veto can be circumvented was the adoption by the General Assembly, following the Russian veto on 30 September 2022 of Security Council resolution (S/2022/720), of a resolution condemning the RF's attempted illegal annexation of Donetsk, Kherson, Luhansk and Zaporizhzhia and demanding the immediate withdrawal of Russian forces from Ukraine, in which it described Russian's attempt to unlawfully annex four regions of Ukraine as "a threat to international peace and security".²⁰

2. THE PRACTICE OF THE POLISH PARLIAMENT: RESOLUTIONS OF THE SEJM AND SENATE RECOGNISING RUSSIA AS A TERRORIST STATE AND THEIR POTENTIAL CONSEQUENCES

The failure of a given state (including due to a lack of political will) to recognise a particular state as supporting terrorism under a relevant Security Council resolution does not mean that individual states cannot do so autonomously under national law, where the effects of such a decision are governed by national law, which in turn determines their nature, which may vary from e.g. political, to legal or economic. Such regulations, entailing fierce legal and economic consequences have been adopted by, inter alia, Canada and the US.²¹ Although the European countries have not introduced such regulations, they have not remained passive in their reactions.

In correlation with the PACE and EP resolutions, both chambers of the Polish Parliament adopted resolutions recognizing Russia as a terrorist state. In its resolution the Senate qualified as acts of "state terrorism" the Russian activities on the Ukrainian

²⁰ General Assembly, Resolution A/ES-11/L.5: *Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations*.

²¹ One of countries that has a comprehensive legal regulation concerning a designation of a state as a sponsor of terrorism is the United States. The countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are designated pursuant to three laws: section 6(j) of the Export Administration Act; section 40 of the Arms Export Control Act; and section 620A of the Foreign Assistance Act. Insofar as regards Russia, despite the appropriate legal basis the US has so far not recognised it as a terrorist state, despite considerable pressure from the US Senate and Ukraine (US Senate Resolution of 27 July 2022, "Resolution calling on the Secretary of State to designate the Russian Federation as a state sponsor of terrorism", S.Res.623; This resolution expresses the Senate's view that the actions of the Russian government, at the direction of President Vladimir Putin, are sponsoring acts of terrorism; and calls on the Department of State to designate Russia as a state sponsor of terrorism.). The administration has been sceptical, arguing that such a decision would not add value to the existing sanctions, and could instead cause a number of problems, e.g. in relations with US allies, as well as precluding negotiations that could end the war. The Secretary of State's decision should be seen in the light of the fact that designation of a state as a sponsor of terrorism means restrictions on foreign aid; a ban on defence exports to such governments; controls on exports of technology with potential military use and financial constraints; and also has implications for the states' sovereign immunity in US courts. Should the United States designate Russia as a state sponsor of terrorism, Russia will be stripped of any immunity under the United States Foreign Sovereign Immunities Act, which will result, most importantly, in litigants being able to obtain not just compensatory damages, but punitive damages against Russia. The consequences of the designation would also extend to third countries having relations with the designated state (see <https://tinyurl.com/funrw299>, accessed 30 April 2023).

territory which amounted to: terrorizing the inhabitants of Ukrainian cities; bombing civilian targets; torturing and murdering prisoners of war and civilians; abducting Ukrainian children and transferring Ukrainian citizens to the far periphery of Russia. In conclusion, the Senate called on other states to consider the RF as a terrorist regime.

In turn, the Sejm, in its resolution of 14 December 2022 expressly designated Russia as a state that supports terrorism and uses terrorist measures. It linked Russia with terrorism by indicating that the RF and its subordinate structures and armed formations are committing acts of terror against civilian infrastructure; summary executions and abductions; sexual violence and torture; tearing children from their families to subject them to Russification; conducting mass deportations of the population and forced conscription of Ukrainian citizens into the Russian armed forces; and are violating the rights of prisoners of war and plundering property. The Sejm also stated that the forms of terror used by Russia against Ukrainian citizens constitute crimes against humanity and genocide.

The adoption of these resolutions and their significance should be assessed in light of the entire practice of adopting such non-binding documents. The resolutions of the Sejm (or less often, the Senate) adopted so far which contain a clear recognition of the responsibility of a foreign state for serious violations of international law have concerned only historical events and, in principle – apart from the situation of the Armenian genocide²² and the Great Famine in Ukraine²³ – have referred to the history of the Republic of Poland, Polish citizens or people of Polish nationality. Among such resolutions are: the 2009 resolution of the Sejm commemorating the victims of crimes committed in the years 1937-1939 against Poles living in the USSR;²⁴ the 2010 resolution of the Sejm commemorating the 70th anniversary of the Katyn massacre;²⁵ the 2013 resolution of the Sejm on commemorating the 70th anniversary of the Volhynian Massacre;²⁶ and the 2007 resolution of the Senate adopted on the 68th anniversary of the Soviet aggression against Poland.²⁷

²² Resolution of the Sejm of the Republic of Poland of 19 April 2005 on the 90th anniversary of the genocide committed against the Armenian population in Turkey during World War, available at: http://orka.sejm.gov.pl/proc4.nsf/uchwaly/3918_u.htm (accessed 30 April 2023).

²³ Resolution of the Sejm of the Republic of Poland of 9 December 2015 on commemorating the 82nd anniversary of the Great Famine in what is now Ukraine and paying homage to its Polish victims, M.P. 2015, item 1270.

²⁴ Resolution of the Sejm of the Republic of Poland commemorating the victims of crimes committed in the years 1937-1939 against Poles living in the USSR, M.P. 2009, No. 47, item 684.

²⁵ Resolution of the Sejm of the Republic of Poland of 9 April 2010 commemorating the 70th anniversary of the Katyn massacre, M.P. 2010, no. 21, item 198.

²⁶ Resolution of the Sejm of the Republic of Poland of 12 July 2013 on commemorating the 70th anniversary of the Volhynian Massacre, M.P. 2013, item 606.

²⁷ Resolution of the Senate of the Republic of Poland of 14 September 2007 adopted on the 68th anniversary of the Soviet aggression against Poland, M.P. 2007, no. 64, item 723.

Except for the war in Ukraine, the only currently ongoing conflict which has attracted the attention of Polish parliamentarians due to the scale of human rights violations has been the war in northern Iraq and part of Syria as a result of the occupation of these areas by the ISIS terrorist organization and its creation of a self-proclaimed caliphate there under the name of the Islamic State. In that regard a resolution of September 2014 was adopted by the Sejm expressing solidarity with Christians, Yazidis, Kurds and representatives of other religious and ethnic minorities and recognizing that the actions taken against them by the Islamic State constituted genocide.²⁸ The classification of the Islamic State as a terrorist organization was in line with the decisions taken in this matter on the international arena by the UNSC.²⁹ In another resolution of December 2016,³⁰ the Sejm again classified the persecution of the population living in these areas as genocide, although it assessed that not only the activities of ISIS in Iraq and Syria, but also the activities of radical Islamic groups in other countries of the Middle East and North Africa bear the hallmarks of this crime. When making such a classification of ISIS activities, the Sejm referred to documents adopted by UNSC and the European Parliament, recognizing the activities of ISIS as terrorist acts that pose a threat to international peace and security.³¹ In the context of accepting the classification of ISIS activities as terrorist activities, also worth noting is the resolution of the Sejm of November 2015 expressing solidarity with the French nation after the terrorist attacks in Paris,³² although this resolution, while referring to “victims of terrorist attacks” does not specifically refer to the crime as having been committed by a terrorist organization.

The Polish Parliament has so far not decided to condemn other situations of serious violations of human rights that are currently taking place. For example, unlike the Lithuanian Parliament, which classified the current policy of China towards the Uyghurs as genocide, the Sejm and the Senate have not taken a stance on this issue.³³

The violations of international law committed during the conflict in Ukraine mark the first time that the Polish Parliament has decided to recognize – in the con-

²⁸ Resolution of the Sejm of the Republic of Poland of 26 September 2014 on the genocide committed against Christians, Yazidis, Kurds and representatives of other religious and ethnic minorities by the Islamic State terrorist organization in northern Iraq and Syria, M.P. 2014, item 891.

²⁹ The UN designated the ISIS as a terrorist group pursuant to Resolution 1267 (1999) and Resolution 1989 (2011) concerning Al-Qaida and associated individuals and entities.

³⁰ Resolution of the Sejm of the Republic of Poland of 2 December 2016 on condemning the mass extermination of religious minorities by the so-called Islamic State, M.P. 2016, item 1191.

³¹ Security Council resolution 2249 (2015) on terrorist attacks perpetrated by the Islamic State in Iraq and the Levant (ISIL) also known as Da'esh of 20 November 2015; European Parliament, Resolution on the systematic mass murder of religious minorities by the so-called ‘ISIS/Daesh’ of 4 February 2016 (2016/2529(RSP)).

³² Resolution of the Sejm of the Republic of Poland of 19 November 2015 on solidarity with the French nation and commemorating the victims of terrorist attacks in Paris, M.P. 2015, item 1157.

³³ It should be emphasized, however, that the resolution of the Lithuanian parliament is in line with the current actions of Lithuania, which has tightened its policy towards China while strengthening relations with

text of an ongoing armed conflict – that a foreign state has committed/is committing acts that constitute violations of international law and attributed to its actions the features of terrorist activity.

The resolutions and statements of the chambers of the Polish Parliament discussed above recognizing Russia as a terrorist state are the culmination of a whole series of documents adopted by these bodies since the beginning of the aggression against Ukraine in 2014. The first resolutions, expressing solidarity with Ukraine and support for its territorial integrity, were adopted at the turn of 2013³⁴ and 2014.³⁵ And as the threat of full-scale aggression both approached and was implemented, the Parliament adopted successive positions. Already on 23 February 2022, the Sejm adopted a resolution stating that recognition by the RF of the independence of the two self-proclaimed so-called Luhansk and Donetsk republics constituted aggression directed against the independent state of Ukraine.³⁶ Subsequently, on 24 February 2022 the Sejm issued a Statement on the aggression of the RF against Ukraine;³⁷ in April 2022 the Sejm adopted a resolution condemning the crime of genocide in Ukraine;³⁸ and in September 2022 condemned the illegal referenda held by the Russian authorities in the occupied territories of Ukraine.³⁹

3. ASSESSMENT AND CONSEQUENCES OF THE INTERNATIONAL RECOGNITION OF RUSSIA AS A TERRORIST STATE

Although neither the resolutions of the PACE and EP associating Russia with terrorism nor the resolutions adopted by both chambers of the Polish Parliament have a binding character, their adoption significantly exceeds a merely symbolic resolution. Although documents of a soft law character, they may entail consequences on both the international and domestic levels.

Taiwan. *See Sejm Litwy przyjął uchwałę w sprawie Ujgurów. „Chiny dokonują ludobójstwa”*, available at: <https://kurierwilenski.lt/2021/05/20/sejm-litwy-przyjal-uchwale-w-sprawie-ujgurow-chiny-dokonuja-ludobojstwa/> (accessed 30 April 2023).

³⁴ Resolution of Sejm of the Republic of Poland of 3 December 2013 on the situation in Ukraine, M.P. 2013, item 1021.

³⁵ Resolution of Sejm of the Republic of Poland of 5 March 2014 on solidarity with Ukraine, M.P. 2014, item 186.

³⁶ Resolution of the Sejm of the Republic of Poland of 23 February 2022 on Russia's aggression against Ukraine, M.P. 2022, item 281.

³⁷ Statement of the Sejm of the Republic of Poland of 24 February 2022 on the aggression of the Russian Federation against Ukraine, M.P. 2022, item 284.

³⁸ Resolution of the Sejm of the Republic of Poland of 8 April 2022 on the condemnation of the crime of genocide in Ukraine, M.P. 2022, item 407.

³⁹ Resolution of the Sejm of the Republic of Poland of 29 September 2022 on the condemnation of illegal referenda conducted by the Russian authorities in the occupied territories of Ukraine and on taking action to stop issuing visas to citizens of the Russian Federation, M.P. 2022, item 976.

By designating Russia as a state pursuing terrorist policy, or simply as a terrorist state, both European organs expressed the international condemnation of the violations of law and of the cruelty of Russian actors, and confirmed their solidarity with the Ukrainian nation. They associated Russia's terrorist activity with serious violations of international humanitarian law, which simultaneously constituted confirmation of the necessity to hold the perpetrators of these violations accountable under law.

Recognition that the current authorities of the RF are conducting a terrorist policy is consistent with the earlier decisive assessments made by both organisations with regard to Russia's actions. Furthermore, insofar as regards the EU the resolution of the EP may constitute a starting point for taking future actions towards establishing a legal framework for the future recognition of the RF as a state sponsoring terrorism.

In addition, the recognition of the RF a terrorist state confirms Russia's international isolation. In this regard, it is the next step following Russia's exclusion from the CoE⁴⁰ and after the imposition by the EU of massive and unprecedented sanctions against Russia and its citizens in response to the war of aggression against Ukraine. These resolutions sealed the RF's lack of relations with both organisations, confirming that it is impossible to maintain "business as usual" with a state against which such serious allegations of violations of international law, including human rights and humanitarian law, are made. A very good example confirming the ostracism of Russia in the international arena is the issuance by the ICC of arrest warrants against Vladimir Putin and Maria Lvova-Belova.⁴¹

Classifying Russian actions as terrorist also has a large symbolic dimension and may have a negative impact on the perception of Russia in the international arena. The firm tone of the resolutions may negatively impact further decisions regarding the international presence of the RF – especially its membership in international institutions and structures and the position of the Russian personnel employed in the secretariats of international organisations. During the ongoing debates about the reform of the UNSC, opinions have been voiced that Russia be removed, or at least suspended, from the body as an aggressor state.⁴² The position that Russia should be deprived of its status as a permanent member of the UNSC was also

⁴⁰ For more details, see S. Zaręba, *The Council of Europe and Russia: Emerging from a Crisis or Heading Towards a New One?*, in: L. Gruszczynski et al. (eds.), *The Crisis of Multilateral Legal Order. Causes, Dynamics and Implications*, Routledge, New York: 2022.

⁴¹ Press release: Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, 17 March 2023, available at: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (accessed 30 April 2023).

⁴² President of the European Council Charles Michel stated on 23 September 2022, in his speech to the 77th UN General Assembly on the Russian Federation, that "when a permanent member of the Security Council starts an unprovoked, unjustified war which has been condemned by the General Assembly, its suspension from the Security Council should be automatic".

clearly expressed in, e.g., the resolution of the Estonian Parliament. It cannot be ruled out that the ongoing war, as well as Russia's classification as a terrorist state, will intensify further discussions on reforms within the UN.

The recognition of the RF as a terrorist state may also complicate the internal situation in the country. Until now it was the RF that used the argument that the Ukrainian authorities had engaged in activities of a terrorist nature; now it has to face the same formal assessment of its own conduct. In addition, it must be borne in mind that Russians are extremely sensitive to symbolic issues and issues of prestige, which may prove particularly acute when they have to confront the growing opinion that their country is a threat to the international order and security. The adopted resolutions significantly lower the position of Russia in the 'international order' and place it among countries such as North Korea or Iran. This is a particularly painful consequence when one takes into account Russia's policy in recent years of presenting itself as a superpower, aimed at restoring its place among the world's greatest powers. In the long term, the decline in Russia's position in the international arena may change the attitude of the Russian society towards the authorities.⁴³

The resolutions adopted by the upper and lower chambers of the Polish Parliament confirm the convergence of opinion among the Polish authorities and international organizations towards Russian aggression. Furthermore, it would not be an exaggeration to conclude that they express the position of the vast majority of the Polish political class and outline not only the current attitude of the Polish authorities towards Russia, but are and will be a firm position for at least the nearest future. The adoption of resolutions is only one of many examples of actions on the part of the Polish authorities aimed at cutting almost all ties between Poland and Russia.⁴⁴

The designation of the RF as a "terrorist state" was associated – in both the resolutions of the Polish Parliament as well as the resolutions of the organs of CoE and EU – with serious violations of international law, including international humanitarian law. This is an issue that can give rise to legal actions in two distinct ways, i.e. via the sanctions regime and⁴⁵ the criminal responsibility of the perpetrators.

Insofar as the sanctions regime is concerned, it has to be observed that both in Poland and in the EU one of the grounds for imposing restrictive measures

⁴³ *Uznanie Rosji za państwo terrorystyczne – pusty gest czy ocenianie kraju bez relatywizowania?* [Recognizing Russia as a terrorist state – an empty gesture or assessing the country without relativizing it?], Podcast, interview with Dr. Agnieszka Bryc, TokFM, 28 November 2022.

⁴⁴ However, resolutions cannot be treated as classic unilateral acts of a state, i.e. binding acts at the international level. See P. Saganek, *Unilateral Acts of States in Public International Law*, Brill Nijhof, Leiden – Boston: 2015, pp. 34 and 136nn.

⁴⁵ The sanctions that can be currently imposed on Russian citizens and enterprises operating on the Polish territory result from decisions taken at the level of the European Union (restrictive measures are laid down in Common Foreign and Security Policy (CFSP) Council decisions) or from decisions of Polish authorities taken pursuant to relevant statutory provisions. In practice, in the case of the sanctions in question the Council

has been the involvement of an individual or individuals in the commission of an international crime or crimes. The regulations condition the possibility of imposing sanctions on recognising certain acts as serious violations of international law. Recognition by the Polish Parliament that a range of Russian activities constitute violations of international law, while at the same time exhibiting the characteristics of terrorist activity, can constitute another argument strengthening the justification of the relevant domestic organ (in case of Poland the Minister of Internal Affairs and Administration) charged with making the decisions on restrictive measures.

Besides the issue of sanctions, the issue of accountability for international crimes may also be influenced by the Parliament's decision designating Russia as a terrorist state. This constitutes an observation relevant both from the international and domestic perspectives.

Firstly, it is generally assumed that certain manifestations of terrorism may be simultaneously classified as crimes against humanity and war crimes, which may be relevant in assuring the accountability of individuals for these crimes under international law. The notions, however, are not equivalent. Considering that terrorism is not a separate international crime (although there exists a possibility of adjudicating acts of terrorism by the International Criminal Court if they fulfil the features of crimes within its jurisdiction), one has to be careful while using such notions as "terrorist regime", "terrorist state" or "state supporting terrorism". It cannot be excluded that the use of such concepts may complicate and dilute otherwise unambiguous legal assessments regarding the legal classification of acts committed by the Russian functionaries as crimes against humanity, war crimes, or genocide. It is therefore of outmost importance to differentiate between the designation of the RF as a "terrorist state" in connection with the violations of international law

Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in connection with Russia's actions destabilizing the situation in Ukraine is of key importance (OJ L 229, 31.7.2014, p. 1-11). From a formal point of view, subsequent packages of sanctions constitute an amendment to this regulation (A summary of the EU restrictive measures in view of Russia's invasion of Ukraine is available at: <https://eur-lex.europa.eu/EN/legal-content/summary/eu-restrictive-measures-in-view-of-russia-s-invasion-of-ukraine.html>). At the level of domestic legislation, sanctions are introduced in Poland under the Act of 13 April 2022 on special solutions to counteract the support of aggression against Ukraine and to protect national security (Journal of Laws, item 835). It should be observed that the Polish sanctions' regime against Russia is at the initial stage of its creation, hence in practice the sanctions imposed by the EU regulations are of much greater importance. According to Art. 3 points 1 and 6 of the Act of 13 April 2022, the decisions have been taken with regard to persons and entities having financial resources, funds and economic resources which directly or indirectly support: 1) the aggression of the Russian Federation against Ukraine, which commenced on 24 February 2022, or 2) serious violations of human rights or the repression of civil society and democratic opposition, or whose activities constitute another serious threat to democracy or the rule of law in the Russian Federation or in Belarus – or directly related to such persons or entities, in particular due to personal, organizational, economic or financial ties; or in relation to which there is a likelihood of using such funds or economic resources at their disposal for this purpose. See the list of decisions of the Minister of Internal Affairs and Administration (available at: <https://www.gov.pl/web/mswia/lista-osob-i-podmiotow-objetych-sankcjami> (both accessed 30 April 2023).

(including crimes against humanity and alleged genocide) perpetrated by it, and the legal qualifications under international law of acts perpetrated by the individuals.

Secondly, numerous national prosecution offices have initiated preliminary preparatory proceedings into the war in Ukraine and crimes committed in its course. This was also done by the Polish prosecutor's office, which launched its own investigation in March 2022. The Polish prosecution authorities initiated – under Art. 117 § 1 of the Penal Code (PC) – an investigation into the war of aggression launched on 24 February 2022 by the authorities and officials of the RF and directed against the sovereignty, territorial integrity and political independence of Ukraine, as well as the continuation of the armed attack on Ukraine by the Russian armed forces. The scope of these proceedings also includes the activities of the authorities of the Republic of Belarus in making its territory available for acts of armed aggression against Ukraine. What is interesting, the proceedings were not initiated under the principle of universal jurisdiction but based on the principle of personal jurisdiction resulting from Art. 110 § 1 PC. Pursuant to this provision, Polish criminal provisions apply to foreigners who have committed a prohibited act abroad directed against Polish interests and to a foreigner who has committed a terrorist offense abroad. Thus, the idea behind the legal basis for conducting the proceedings is that the aggression against Ukraine, a country directly neighbouring Poland, is a threat to European and international security, and as such is directed against the interests of the Republic of Poland. It cannot be excluded (indeed is rather certain) that in the course of the proceedings its scope will be extended and the prosecutors will investigate new acts committed by Russian officials. Some of them could be qualified under the provisions of the Polish Criminal Code penalising different kinds of crimes of terrorism (Arts. 65 § 1, 110 § 1, 115 § 20 or 258 § 2 PC). It can be assumed that the position of the legislative authority designating the activities of the RF as terrorist may be taken into account by the court when interpreting the definition of the elements constituting a prohibited act of a terrorist offense.⁴⁶

CONCLUSIONS

The adoption by the parliamentary bodies of the CoE and the EU, as well as by national parliaments (including the Polish ones), of resolutions recognizing Russia as a terrorist state are, although not legally-binding, already having consequences. Designating Russian actions as terrorist has a large symbolic dimension and may have a negative impact on the perception of and possibilities of Russian participa-

⁴⁶ For more about the problems with the qualification of certain acts as crimes of terrorism, see R. Zgorzały, *Przestępstwo o charakterze terrorystycznym w polskim prawie karnym* [Terrorist crime in Polish criminal law], 7-8 Prokuratura i Prawo 58 (2007).

tion in the international arena. It will certainly intensify further discussions on the reforms of the UNSC – especially in light of the fact that on 1 April 2023 Russia assumed its presidency despite the severe doubts being expressed by several states. A situation in which a permanent member of the UNSC is designated as a terrorist state whose president is subject to an international arrest warrant for alleged war crimes is seen as unacceptable by many countries. While no feasible international legal pathway currently exists to change that reality, in the long term the situation is untenable and may change. From the Polish perspective, the national decisions linking Russia with terrorist activities may have influence on the decisions taken within the sanctions regime, as well as with regard to the legal qualification of certain acts under the Polish PC in the course of proceedings conducted by prosecution authorities in relation to the war. Finally, as long as the war continues and the assessment of Russia as a terrorist state remains valid it will not be possible to restore and maintain ordinary relations with the RF.